IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

WP(C).No. 34164 of 2006(P)

OS.589/2006 of II ADDL.SUB COURT,TRIVANDRUM

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PETITIONER:

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1. MARY MATHA COLLEGE OF ENGINEERING AND TECHNOLOGY, THIRUVANANTHAPURAM, HAVING ITS ADMINISTRATIVE OFFICER AT TUTORS LANE STATUE, THIRUVANANTHAPURAM, REPRESENTED BY ITS CHAIRMAN, L.WILSON.

2. L.WILSON, S/O.LAZAR NADAR, AVIKUZHIVEEDU, OLLATHANNI, NEYYATTINKARA.

BY ADV. SRI.M.NARENDRA KUMAR
SRI.M.P.MADHAVANKUTTY

RESPONDENTS:

SMT.PREETHI ELIZABETH IYPE, D/O.IYPE DANIE, RESIDING AT TC 11/1769, H-17, CHARACHIRA, KOWDIAR P.O., TRIVANDRUM.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.34164 OF 2006

Dated 21st December 2006

JUDGMENT

Petitioners are defendants in O.S.589/06 on the file of Sub court, Thiruvananthapuram. In the suit the vehicle belonging to petitioner was attached before judgment under Order XXXVIII Rule 5 of Code of Civil Procedure. Petitioner was directed to furnish security for the amount of Rs.3,68,000/- claimed by plaintiff. Petitioners filed I.A.6285/06 to release the vehicle on furnishing security of immoveable property. Plaintiff/respondent opposed the application contending that petitioner shall produce fixed deposit receipt. Learned Sub Judge as per order dated 15/12/2006 directed petitioner to produce fixed deposit receipt stating that counsel appearing for plaintiff insisted for production of fixed deposit receipt and posted the case to 16/12/2006. On that day stating that no fixed deposit receipt was produced learned Sub Judge re-iterated the earlier statement that plaintiff insisted for production of fixed

deposit receipt and posted the case to 20/12/2006. Said order is challenged in this petition filed under Article 227 of Constitution of India.

2. When order of attachment is passed under Order XXXVIII Rule 5 of the Code of Civil Procedure mandates though conditional order of attachment could be passed, there should be a direction that defendant has to furnish security or to show cause why he shall not furnish security. When security is furnished, court is bound to consider sufficiency of the security. It cannot say that immoveable property is not sufficient security. Court cannot go by the insistence of the plaintiff that fixed deposit receipt is to be produced. It is for the court to decide whether security furnished is sufficient or not.

3. Learned Sub Judge is directed to consider whether security furnished by petitioner is sufficient or not and pass appropriate order in accordance with law. It is represented by the learned counsel appearing for petitioner that vehicle has been attached and brought to the court compound and is lying there. Learned Sub Judge is directed to pass appropriate order

without any delay. It is made clear that vehicle shall not be kept allowed to be ousted or destroyed.

Writ petition is disposed of.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.